

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CR-98-1101  
v. : U.S. Courthouse  
JOHN DOE, : Brooklyn, New York  
Defendant. : TRANSCRIPT OF HEARING  
: June 21, 2010  
-----X 10:30 a.m.

BEFORE:

HONORABLE I. LEO GLASSER, U.S.D.J.

APPEARANCES:

For the Movant: MORGAN LEWIS & BOCKIUS LLP  
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New York, New York 10178-0060  
BY: KELLY A. MOORE, ESQ.  
BRIAN A. HERMAN, ESQ.  
DAVID A. SNIDER, ESQ.

For the Respondent: WILSON ELSEER MOSKOWITZ EDELMAN  
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BY: RICHARD LERNER, ESQ.  
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Court Reporter: Mickey Brymer, RPR  
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United States District Court  
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M. BRYMER, RPR, OCR

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1 was under seal in the Eastern District of New York?

2 MR. LERNER: Objection.

3 THE COURT: I will allow that.

4 A. Truthfully, I don't know it now. By that I don't mean to  
5 contradict what the Court said. I certainly respect the  
6 Court. And last week, if I'm not mistaken, the Court said and  
7 I'll get the quote later on, I apologize to your Honor, that  
8 there is no order. At the beginning of the matter I had  
9 everything filed in the case sealed. Whatever the Court's  
10 exact words were, certainly I was there, I heard that, I  
11 assume it is true, and if that's knowledge, that's the first  
12 time I ever had such knowledge.

13 Q. That's the very first time you had knowledge?

14 A. That's the very first knowledge -- first time, if it is  
15 knowledge, that is the first time I had knowledge that the  
16 entire record was sealed.

17 Q. How about the exhibits that were attached to the SDNY  
18 complaint, did you know that some of them were sealed?

19 A. I still don't know that because when the Court said -- I  
20 believe what the Court said last week in further comment was  
21 that his Honor checked the computer files, found that the  
22 general files, if I'm not mistaken, was marked sealed and his  
23 Honor said that there were six documents listed without  
24 description that were under seal and that he didn't look to  
25 see what they were, but could if he wanted to. My point being

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1 that I actually have no knowledge that they're sealed.

2 Q. Well, paragraph 96 of that complaint says because his  
3 guilty plea to the criminal RICO proffer and cooperation  
4 agreement were sealed. When you drafted that portion, did you  
5 know that they were sealed?

6 A. I drafted more words after that. You're moving them out  
7 of context to distort the meaning.

8 Q. Because his guilty plea to criminal RICO proffer and  
9 cooperation agreement were sealed, as he was aiding the  
10 prosecution of his Mafia and Russian organized crime  
11 confederates, does that change your understanding of the  
12 documents were sealed?

13 A. Well, I know what I wrote. Since it is not -- wait a  
14 second. I can check. Can you hang on while I go look at  
15 paragraph 96?

16 Q. Absolutely.

17 A. Please, since I'm confused, what is exactly your question  
18 here?

19 Q. When you wrote because the guilty plea to criminal RICO,  
20 proffer and cooperation agreement were sealed, did you know  
21 that those documents were sealed?

22 A. I've already testified that I never have and still don't  
23 know that they're sealed.

24 Q. So, what is the meaning of that sentence when you say  
25 were sealed?

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1 A. It means I'm alleging on behalf of my clients that we can  
2 prove, should there be any fact at all, an ultimate fact that  
3 they were sealed, that doesn't mean I know it to be true nor  
4 are those my words. I wrote them on behalf of my clients.

5 Q. When you wrote that it is your testimony you were not  
6 under the belief the documents were sealed?

7 A. I already testified what I believe to be the state of the  
8 world with respect to how I represent them and what I chose to  
9 aver on their behalf as work product. This complaint is  
10 Mr. Kriss' statement that he believes the following to be true  
11 by the requisite level of pleading confidence. If I'm not  
12 mistaken, is it Rule 11? Whatever it is in Federal Court. It  
13 is not an ultimate fact. Nothing in the complaint depends on  
14 it. It is not judicial admission, and, even if it were, it  
15 isn't mine.

16 Q. It is your client's?

17 A. I said it is not judicial admission and, but, even if it  
18 were, it is not mine.

19 Q. You disagree with the statement that the criminal  
20 complaint, the proffer and cooperation were sealed?

21 A. I couldn't very well do that because that would require  
22 my knowledge of whether they are sealed and I still don't know  
23 whether they are sealed.

24 Q. Mr. Oberlander, did you yourself ever make any attempt to  
25 obtain any portion of the criminal file from the courthouse

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1 THE WITNESS: I apologize, your Honor. There are ECF  
2 rules published by EDNY and SDNY, jointly electronic filing  
3 rules, and they refer to filing of all documents, not merely  
4 complaints, and I'm pretty certain, it is funny -- again I  
5 apologize, but there are two sets of rules, two so I'm  
6 assuming it is 21E and -- whatever they are they are back to  
7 back.

8 One says if your document contains any of the  
9 documents you may not file it electronically or I guess  
10 without court order or court permission. So, that would be  
11 according to Ms. Moore's questions you are prohibited from in  
12 the absence of extenuation filing. Following that I think is  
13 21F, which contains a list of items which if your document  
14 contains them you are perfectly free to file under seal, but  
15 if I can paraphrase you probably ought to think about it  
16 before you do that and consider attempting getting it sealed.

17 THE COURT: Among the documents listed are  
18 cooperation agreements?

19 THE WITNESS: Indeed.

20 THE COURT: Yes?

21 THE WITNESS: Honestly, yes.

22 THE COURT: Presentence reports?

23 THE WITNESS: No.

24 THE COURT: Cooperation agreements?

25 THE WITNESS: Two-word phrase cooperation agreement,

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1 if it doesn't say that, it says something like -- evidence in  
2 cooperation with the government. May say cooperation  
3 agreement. Yes, it is very clear what it refers to. It  
4 does.

5 THE COURT: Does it also refer to proffer agreements,  
6 which are essentially almost synonymous with cooperation  
7 agreements?

8 THE WITNESS: No, it does not, no.

9 THE COURT: You indicated earlier I believe you had  
10 no idea, if I'm paraphrasing correctly, what a sealed case is,  
11 what sealing encompasses and so on. Do you recall that?

12 THE WITNESS: No, I apologize.

13 THE COURT: You never said anything like that?

14 THE WITNESS: No, no. The words are similar to what  
15 I said, that I certainly would never have said more than I  
16 mean to say, that I don't know what it means when a case is  
17 put under seal. Of course, I know what it means when a case  
18 is put under seal. I believe Ms. Moore was asking me what  
19 documents I knew to be part of the sealed -- whatever you want  
20 to call it. There is a sealed, what is it, envelope? However  
21 your Honor wishes to refer to it. Assume in an average case  
22 there are some documents that are sealed and some that are  
23 not. In this case it may be all documents.

24 Ms. Moore has generally been asking me or in fact  
25 entirely been asking me did you know this document was sealed,

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1 did you know that one and I said no, but if you're asking me  
2 do I know what it means when a court orders a case sealed,  
3 yes, of course I do and I apologize for any confusion.

4 THE COURT: Do you understand that it means that the  
5 case generically, meaning everything connected with that case,  
6 is sealed? The case is sealed, what does that mean?

7 THE WITNESS: May I answer? I would very much like  
8 to answer that.

9 THE COURT: By all means.

10 THE WITNESS: All right. In this particular case,  
11 not having seen the sealing order, I certainly can't comment  
12 on what any -- in general, my understanding is that when a  
13 judge orders a case sealed that the order at a minimum directs  
14 court personnel to remove the documents that are subject to  
15 the sealing order from the publicly available file to keep  
16 them sequestered somewhere, somewhere I guess in a safe of  
17 some kind, to decline to release them to any member of the  
18 public or anyone else asking for them, who doesn't have a court  
19 order and that a sealing order will typically, but not  
20 necessarily, also include an order of the Court in the nature  
21 of an injunction enjoining certain parties for that action  
22 from disseminating some or all of the same documents.

23 That would be my generic understanding of what a  
24 sealing order is. It is not in rem, could not be in rem. It  
25 is directed to court personnel not to disclose and directed